



Signed and Filed: April 29, 2011

A handwritten signature in dark ink, appearing to read "T. E. Carlson", is written over a horizontal line.

THOMAS E. CARLSON
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 10-33208 TEC
)	
ALEXANDER ALBERTO CASTILLO,)	Chapter 7
aka DAXENO CASTILLO,)	
aka ALEXANDER DAXENO CASTILLO,)	
aka DAXENO ALEXANDER CASTILLO,)	
)	
)	
Debtor.)	

MEMORANDUM RE ORDER TO SHOW CAUSE RE ATTORNEY FEES

On February 11, 2011, the court held a hearing on the court's January 21, 2011 Order to Show Cause Regarding Attorney Fees (the Order). Michael Shemtoub (Shemtoub) appeared in response to the Order. Alexander Castillo (Debtor) appeared in pro per.

Upon due consideration, the court determines that the attorney fees collected by Shemtoub from Debtor exceed the value of the services provided to Debtor, and that Shemtoub must repay Debtor all fees collected, except the \$299 chapter 7 filing fee. This memorandum shall constitute the court's findings of fact and conclusions of law.

FACTS

On December 29, 2009, Debtor retained Shemtoub to file a chapter 7 bankruptcy case and agreed to pay Shemtoub a flat fee of

1 \$1,500 for Shemtoub's legal services in connection with Debtor's
2 bankruptcy case.

3 On January 6, 2010, Debtor paid Shemtoub \$100. On August 18,
4 2010, Debtor paid Shemtoub an additional \$800.

5 On August 20, 2010, Shemtoub filed Debtor's chapter 7
6 bankruptcy petition, paid Debtor's \$299 chapter 7 filing fee, and
7 filed a Rule 2016(b) statement. The Rule 2016(b) statement
8 provides that Debtor paid counsel \$500 prepetition,¹ that the unpaid
9 balance is \$1,000, and that Debtor's wages are the source of
10 payments for the unpaid balance.

11 On August 27, 2010, Shemtoub spent three hours attempting to
12 stop the garnishment of Debtor's wages.

13 On September 14, 2010, Shemtoub spent thirty minutes gathering
14 documents required to be filed in the bankruptcy case pursuant to
15 11 U.S.C. § 521.

16 On September 15, 2010, Shemtoub spent thirty minutes
17 attempting to obtain tax information for Debtor from the Internal
18 Revenue Services.

19 On September 21, 2010, the initial section 341 meeting of
20 creditors was held. The 341 meeting was continued to November 2,
21 2010.

22 On September 23, 2010, Shemtoub e-mailed Debtor the following:
23 "Alex-you are past due on the \$1,000 due on your case. Please send
24 the balance to us as soon as possible to ensure that your case is
25 not dismissed."

26 On October 29, 2010, Debtor paid Shemtoub \$200.
27

28 ¹ Shemtoub's declaration in response to the order to show
cause provides that Shemtoub collected \$900 from Debtor
prepetition.

1 On November 1, 2010, Shemtoub e-mailed Debtor asking for
2 immediate payment of \$450 for Shemtoub's appearance at the
3 continued meeting of creditors and for making a court appearance on
4 Debtor's behalf.

5 On November 2, 2010, the continued section 341 meeting of
6 creditors was held.

7 On November 5, 2010, the chapter 7 trustee filed a no-asset
8 report.

9 On November 18, 2010, Debtor sent a letter to the above-signed
10 judge regarding Shemtoub's September 23rd e-mail.

11 November 22, 2010 was the deadline for a creditor to file a
12 complaint objecting to Debtor's discharge or to determine the
13 dischargeability of a debt. No such complaint was filed. On
14 November 23, 2010, the court entered Debtor's discharge.

15 On January 21, 2011, the court issued the Order, setting a
16 hearing to show cause why, pursuant to 11 U.S.C. §§ 329(b) and
17 362(k), Shemtoub should not be required to disgorge the fees paid
18 by Debtor or to pay damages to Debtor if the court found that
19 Shemtoub intentionally violated the automatic stay. The Order set
20 February 4, 2011 as the deadline to file a response.

21 On February 7, 2011, Shemtoub filed a response to the Order.
22 The response does not contain any documentary evidence that
23 Shemtoub billed Debtor separately for the work performed for Debtor
24 postpetition, or that the parties had agreed to modify the
25 prepetition retainer agreement. The declaration confirmed the
26 prepetition agreement that Shemtoub would represent Debtor in the
27 bankruptcy case for a flat fee of \$1,500.

1 **LAW**

2 If compensation to a debtor's counsel exceeds the reasonable
3 value of services provided, the court may order the fees returned
4 to the debtor. 11 U.S.C. § 329(b)(2); In re Jastrem, 253 F.3d 438,
5 443 (9th Cir. 2001). The court has authority to order repayment of
6 all fees when an attorney receives compensation in a manner that
7 violates the Bankruptcy Code. E.g., In re Waldo, 417 B.R. 854,
8 892-96 (Bankr. E.D. Tenn. 2009)

9 The court determines that Shemtoub received compensation in a
10 manner that violated the automatic stay² and the discharge
11 injunction,³ because Shemtoub e-mailed Debtor postpetition to demand
12 payment of fees owing under the prepetition retainer agreement,
13 because Shemtoub collected \$200 postpetition on account of fees
14 owing under the prepetition retainer agreement, and because
15 Debtor's obligation to pay the prepetition fees was discharged.
16 Jastrem, 253 F.3d at 442. The appropriate remedy for Shemtoub's
17 violation of the Bankruptcy Code is disgorgement of all fees paid
18 by Debtor to Shemtoub (pre- and postpetition), less the \$299
19 chapter 7 filing fee. 11 U.S.C. § 329(b); see Waldo, 417 B.R. at
20 892-96.

21 ****END OF MEMORANDUM****

22
23
24
25
26
27
28 ² 11 U.S.C. § 362(a).

³ 11 U.S.C. § 524(a).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court Service List

Alexander Alberto Castillo
339 Valencia Drive
South San Francisco, CA 94080

Michael Shemtoub, Esq.
Law Offices of Michael Shemtoub
8383 Wilshire Blvd. #702
Beverly Hills, CA 90211